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Committee against Torture

Communication No. 489/2012

Decision adopted by the Committee at its fifty-third session, 3–28 November 2014

Submitted by:	Asghar Tahmuresi, represented by counsel Urs Ebnöther
On behalf of:	Asghar Tahmuresi
State party:	Switzerland
Date of complaint:	20 January 2012 (initial submission)
Date of present decision:	26 November 2014
Subject matter:	Deportation to Iran
Procedural issue:	-
Substantive issue:	Risk of torture upon deportation
Article of the Convention:	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

Communication No. 489/2012

Submitted by:	Asghar Tahmuresi, represented by counsel Urs Ebnöther
On behalf of:	Asghar Tahmuresi
State party:	Switzerland
Date of complaint:	20 January 2012 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 26 November 2014,

Having concluded its consideration of complaint No. 489/2012, submitted on behalf of Asghar Tahmuresi under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1.1 The complainant is Asghar Tahmuresi, a citizen of the Islamic Republic of Iran (hereinafter "Iran"), born on 1 March 1976. He claims that his deportation to Iran would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, Urs Ebnöther.

1.2 On 26 January 2012, the Committee requested the State party, pursuant to rule 114, paragraph 1, of its rules of procedure, not to deport the complainant to Iran while the complaint was being considered.

The facts as submitted by the complainant

2.1 The complainant is an Iranian national from Karaj, Iran. He left his city after being caught having relations with the wife of a mullah. Fearing persecution owing to the social

standing of the woman's husband and after his parents' house was searched, he decided to leave Iran illegally on 3 April 2003 and enter Switzerland.

2.2 In Switzerland, the complainant became a member of the Democratic Association for Refugees (Association Démocratique pour les Refugiés – ADR), a political association with the aim of "combating the Islamic Republic and protecting human rights" in Iran. He joined the association in August 2006 and has since become the leader of the canton branch for the political activity of ADR in the cantons of Lucerne and Schwyz. He has regularly taken part in the meetings of the association's Executive Committee. He has participated in various demonstrations across Switzerland and distributed the monthly magazine *Kanoun*, which is critical of the Iranian regime, including to politicians in front of the parliament in Lucerne.

2.3 On 15 April 2003, the complainant applied for asylum in Switzerland. On 21 June 2004, the Swiss Federal Office for Refugees (now the Federal Office for Migration – FOM) rejected his asylum request. On 21 June 2004, the complainant lodged an appeal against that decision with the Asylum Appeal Commission (now the Swiss Federal Administrative Tribunal – FAT), which was rejected on 14 July 2006.

2.4 On 24 May 2007, the complainant submitted a second asylum request, emphasizing his political activities in Switzerland. On 28 August 2007, FOM rejected his second request for asylum. On 18 March 2010, FAT once again rejected the appeal against the FOM decision.

2.5 On 3 August 2010, the complainant requested asylum for a third time. He argued that he had increased his political activity in exile, which had exposed him much more than previously. He also claimed that, since 1 January 2010, he had been the head of ADR for the cantons of Lucerne and Schwyz. On 16 August 2010, FOM rejected the asylum request once again, on the grounds that his increased political exposure and responsibilities had not changed the legal situation for the purposes of granting him asylum. On 24 August 2010, the complainant appealed against the decision; however, it was rejected by FAT on 12 December 2011. The decision is final.

2.6 In a letter of 19 December 2011 by the FOM and a letter of 23 December 2011 from the Office for Migration and Asylum in Lucerne, the complainant was ordered to leave the country by 3 January 2012.

The complaint

3.1 The complainant claims that his forcible return to Iran would constitute a breach by Switzerland of article 3 of the Convention.

3.2 In substantiation, he claims that in Iran he would face a real risk of being subjected to treatment contrary to the Convention if he were deported, for the following reasons:

(a) The general human rights situation in Iran has deteriorated since the presidential election in June 2009 and the large-scale protests it engendered. Respect for basic human rights in Iran has continued to deteriorate and the Government has shown no tolerance for peaceful protests or gatherings, routinely detaining participants and subjecting them to torture;

(b) Referring to the European Court of Human Rights judgment in *R.C.* v. *Sweden*,[1] the complainant submits that it is not only political leaders who are facing persecution and the risk of arbitrary arrest, ill-treatment or torture, but also peaceful

[1] *R.C.* v. *Sweden*, application No. 41827/07, judgment adopted on 9 March 2010.

participants in demonstrations and anyone who opposes the current regime. The fact that Iran carries out the second largest number of death penalties annually, often after unfair or politically motivated proceedings, was also underscored;

(c) Owing to the fact that the complainant left Iran illegally, there is an additional risk of his being put under scrutiny upon his return to Iran;

(d) The complainant has been an active member of ADR for the cantons of Lucerne and Schwyz. By the time of the consideration by FAT of his third request for asylum he was the head of ADR in both cantons. However, FAT held that the complainant's exposure still did not reach "a level ... necessary to assume risk of persecution in Iran". That was despite the fact that, in previous decisions, it had ruled that ADR members in high positions had a level of exposure sufficient for a risk of persecution to be assumed in the event of their forcible return to Iran.

State party's observations on the merits

4.1 On 13 June 2012, the State party submitted its observations on the merits of the complaint. It considers that, although the human rights situation in Iran is of concern in several respects, Iran is not affected by generalized violence, and the complainant has not demonstrated that he runs a foreseeable, personal and real risk of being subjected to torture there.

4.2 The State party observes that the complainant declared during his first asylum procedure that he had been hit by a police officer in Iran. He did not, however, mention that incident in his complaint to the Committee, and it therefore could not be considered as a risk factor relating to his return to Iran. The State party also observes that the complainant was never politically active in Iran. Furthermore, the State party's authorities, while examining his asylum request, did not find his claim that he would be persecuted on account of his alleged sexual relationship with the wife of a mullah credible.

4.3 With respect to the complainant's political activity in Switzerland, the State party considers that, although the Iranian Secret Service could exercise surveillance of political activities against the Iranian regime conducted abroad, the Iranian authorities target high-profile individuals acting outside mass opposition and holding positions or deploying activities that could represent a concrete threat to the regime. The State party asserts that the complainant does not have such a profile; the activities in which he alleges he participates are typical activities for many exiled Iranians and would not identify the complainant as potentially dangerous to the Iranian regime even if the Iranian authorities came to know of him.

4.4 The State party asserts that the Iranian authorities are likely to be aware that many Iranians living abroad attempt to portray themselves as dissidents in order to obtain asylum. The Iranian authorities are likely to distinguish between those who are genuinely politically active and who are potentially important political agitators, and those active mainly for the ultimate purpose of obtaining a residence permit abroad. The complainant's activities, including his participation in demonstrations, distribution of a magazine and putting his photographs on the Internet would not, in themselves, draw the attention of the Iranian authorities to him, since they are no different from the activities of many Iranians in Switzerland. ADR is active mainly in Switzerland and its activities are not known abroad. The complainant's family was not aware of his political engagement and does not appear to have had any problems with the Iranian authorities on account of his political activities.

4.5 The State party contests the complainant's statement that he has a particular profile due to his position within ADR. The State party considers his position as of an administrative nature. The complainant's position of canton representative would not expose him more than any other member of ADR. The State party submits that ADR is

known for its systematic activities to provide asylum-seekers with personal grounds for asylum, by organizing weekly stands and publishing photographs on the Internet wherein participants are clearly identifiable. Many ADR members were not politically active in Iran and joined the association only after being refused asylum. Since the Federal Administrative Tribunal had confirmed its ruling that mere membership of ADR did not in itself constitute personal grounds for asylum the association had established a variety of posts, such as logistics or security manager, so that almost every member had a "leadership position" in the association. Such a proliferation of high-level positions diminished their importance.

4.6 The State party asserts that the complainant does not have the profile of a regime opponent who would be considered dangerous by the Iranian authorities. He did not participate in political activities against Iran in Switzerland until FAT denied his request for asylum, and his sudden and recent political engagement is superficial and does not appear to stem from profound conviction.

4.7 The State party submits that the complainant's entire claim concerning his risk of persecution in Iran, and particularly his activities in Switzerland, was examined by the competent Swiss authorities. The complaint submitted to the Committee does not contain any new information, or any claims as to shortcomings in the State party's asylum procedure. The State party refers to the Committee's jurisprudence to the effect that "it is within the purview of the courts of the States parties to the Convention to assess the facts and evidence in a case".[2] In particular, the Committee should examine the facts and evidence where it can be established that "the evidence was assessed in a patently arbitrary manner or one that amounted to a miscarriage of justice"[3] In the case in question, the facts submitted by the complainant do not show any such irregularities.

4.8 The State party also observes that the complainant refers to the decision of the European Court of Human Rights in the case of *R.C.* v. *Sweden*.[4] However, in that case the applicant was able to prove his ill-treatment due to his political engagement in Iran, and therefore the Court declared that there would be a violation of the prohibition of torture in the event of his forced return.

Complainant's comments on the State party's observations

5.1 In his comments of 10 September 2012, the complainant contests the State party's contention that he had not demonstrated that he would be at a foreseeable, real and personal risk of being subjected to treatment contrary to the Convention if he were returned to Iran. He reiterates that even ordinary, low-level, peaceful anti-regime demonstrators and rejected Iranian asylum seekers faced a risk of treatment contrary to the Convention.[5] Given his high-level political activity in ADR, he would face an even higher risk of persecution.

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[2] The State party refers to communication No. 419/2010, *Ktiti* v. *Morocco*, decision adopted on 26 May 2008, para. 8.7.

[3] Ibid.

[4] See footnote 1.

[5] The complainant refers to the recent decision of the European Court of Human Rights in *S.F. and others* v. *Sweden*, application No. 52077/10, adopted on 15 May 2012, where the Court referred to Iran as "a country where on all accounts the human rights situation gives rise to grave concern. It is noted that the country information has changed and that the situation appears to have deteriorated in Iran since the domestic authorities determined the case. It is evident from the current information available on Iran that the Iranian authorities frequently detain and ill-treat persons who peacefully participate in oppositional or human rights activities in the country. The Court notes that it is not only the leaders of the political organizations or other high-profile persons who are detained but that

5.2 He further submits that he mentioned the beating incident only during the first asylum procedure since the subsequent asylum procedures related to the new facts only. Despite the fact that did not mention the beating in his complaint to the Committee, the incident must be considered one of the factors that contributed to the political sensitization of the Iranian authorities towards him. It was also one of the factors that contributed to forming his political opinions.

5.3 The complainant maintains that he was not politically active in Iran owing to the intense surveillance of political activity by the authorities and the concomitant severe repression. The fact that he was not politically active in Iran does not therefore give any indication as to the extent of his political opinions critical of the Iranian regime and his political activities in exile. With respect to his involvement with ADR, he submits that government and other reports indicate that even low-level political activity against the regime may lead to a real and personal risk of persecution. He also submits that, given the strong internet presence of ADR, it cannot be assumed that the organization is not known outside of Switzerland.

5.4 The complainant reiterates that he had had extra-marital relations with the wife of a mullah and that that increased the risk of his being persecuted in Iran. The fact that the Swiss authorities did not consider that to be credible did not reduce the current risk of persecution.

5.5 He also contests the State party's contention that his tasks in ADR are merely administrative. He maintains that he takes part in meetings of the Executive Committee, is responsible for the recruitment of new members in his canton and regularly visits asylum centres. He maintains that he joined the ADR shortly after its foundation and has been a very active member over the last six years. He further refutes the State party's observation that ADR is a diffuse movement and that most of its members hold high positions. He maintains that, beside the Executive Committee and the heads of the canton branches, there are only a few other important roles. Many of those positions have been held for years by people who already have refugee status but nevertheless continue to campaign and demonstrate.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

6.2 The Committee, finding no other reason to consider the communication inadmissible, thus proceeds to its consideration on the merits of the claims submitted by the complainant under article 3 of the Convention.

Consideration of the merits

7.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

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anyone who demonstrates or in any way opposes the current regime may be at risk of being detained or ill-treated or tortured." (para. 63).

7.2 The issue before the Committee is whether the removal of the complainant to Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the evaluation is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.[6]

7.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, in which it states that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion". While the risk does not have to meet the test of being "highly probable", it must be personal and present. The Committee has determined that the risk of torture must be foreseeable, real and personal.[7] The Committee recalls that it gives considerable weight to findings of fact that are made by organs of the State party concerned, but is not bound by such findings and instead can, under article 22, paragraph 4, of the Convention, assess the facts of each case, taking into account the circumstances.[8]

7.5 Referring to its recent jurisprudence,[9] the Committee recalls that there are ongoing reports regarding the use of psychological and physical torture to solicit confessions in Iran indicating the widespread and systematic use of such practices,[10] and of incidents of detention and torture of political opponents of the regime in place.[11] The Committee considers that to be all the more alarming in the light of the fact that Iran frequently administers the death penalty, which it applies without due process and in cases involving certain crimes not meeting international criteria for the most serious offences.[12] The State party itself has recognized the existence of such a situation in Iran.

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[6] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

[7] See, inter alia, communications No. 258/2004, *Dadar* v. *Canada*, decision adopted on 23 November 2005, and No. 226/2003, *T.A.* v. *Sweden*, decision adopted on 6 May 2005.

[8] General comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, para. 9; communication No. 375/2009, *T.D.* v. *Switzerland*, decision adopted on 26 May 2011, para. 7.7.

[9] See communications No. 481/2011, *K.N., F.W. and S.N.* v. *Switzerland*, decision adopted on 19 May 2014; No. 357/2008, *Jahani* v. *Switzerland*, decision adopted on 23 May 2011; No. 381/2009, *Faragollah et al.* v. *Switzerland*, decision adopted on 21 November 2011.

[10] See the report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/69/356), para. 16.

[11] See the report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (A/HRC/25/61), paras. 23–29; Note by the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/68/503), paras. 1, 6, 8 and 30.

[12] See A/HRC/25/61 (see footnote 11), paras. 6–12 and 84; See also communication No. 481/2011, *K.N., F.W. and S.N.* v. *Switzerland* (see footnote 11), para. 7.6.

7.6 The Committee notes that the complainant has been an active member of ADR in Switzerland since 2006, and, as such, his name is listed in the monthly magazine *Kanoun* produced by the organization; that he has attended the meetings of the executive committee, has been responsible for the recruitment of new members in his canton and has regularly visited asylum centres. He has participated on stands, and in campaigns and demonstrations against the Iranian regime and his photograph has appeared on the Internet. The State party has not contested that information. The Committee notes the State party's observation that the Iranian authorities target high-profile individuals that could represent a specific danger to the Iranian regime, and that ADR is active mainly in Switzerland and that its activities are not known abroad. However, the Committee observes that the complainant's work in ADR was not limited merely to participation in demonstrations or to administrative tasks, but placed him among the leadership of an organization publicly opposing the regime in Iran. The Committee observes moreover that recent reports indicate that even low-level opposition is closely monitored in Iran[13] and that the Iranian authorities effectively monitor internet communications and regime critics both within and outside of Iran.[14]

7.7 In the light of all the above circumstances, including the general human rights situation in Iran, the personal situation of the complainant, who has continued his active engagement in political activities against the Iranian regime abroad and bearing in mind its previous jurisprudence,[15] the Committee is of the opinion that the complainant may well have attracted the attention of the Iranian authorities. The Committee therefore considers that there are substantial grounds for believing that the complainant would risk being subjected to torture if returned to Iran. Moreover, the Committee notes that, since Iran is not a party to the Convention, in the event of a violation of the complainant's Convention rights in Iran, he would be deprived of the legal option of recourse to the Committee for protection of any kind.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, concludes that the deportation of the complainant to Iran would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the decision expressed above.

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[13] See A/HRC/25/61 (see footnote 11), paras. 88–90; A/68/503 (see footnote 11), paras. 6–15.

[14] *S.F. and others* v. *Sweden* (see footnote 6).

[15] See the Committee's communications No. 339/2008, *Amini* v. *Denmark*, decision adopted on 15 November 2010, para. 9.8, No. 357/2008 *Jahani* v. *Switzerland* (see footnote 11), para. 9.4, No. 381/2009, *Faragollah et al.* v. *Switzerland* (see footnote 11), para. 9.6.